IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 689 of 2001
(Old No. 838 of 1987)

1. Smt. Hansa Devi W/o Kabul Chand Ramola,
   R/o Village Ramolgaon, Patti Nagur,
   District Tehri Garhwal.
2. Sri Kabul Chand S/o Karan Chand,
   R/o Village Ramolgaon, Patti Nagur,
   District Tehri Garhwal.

…… Appellants

Versus

1. Kalam Chand S/o Kabul Chand,
   R/o Village Ramolgaon,
   District Tehri Garhwal.
2. M/s United India Insurance Co. Ltd.
   9-D, Astley Hall, Dehradun.

…… Respondents

Mr. J.P. Joshi, Advocate for the appellants.
None for the respondents.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 30 of the Workmen's Compensation Act, 1923, is directed against the order dated 05.10.1987, passed by Workmen Compensation Commissioner, Tehri Garhwal in case No. 14 of 1986, whereby the claim of the appellants was rejected.

2) Heard learned counsel for the appellants.

3) Brief facts of the case are that appellants are parents of deceased Anar Chand, who died in an accident on 26.04.1986, near Village Palligaon while travelling in Bus No. USQ / 803. The respondent No. 1, Kalam Chand is owner of the vehicle, and respondent No. 2 is the Insurance Company, with whom the vehicle was ensured, at the time

of the accident. Respondent No. 1 filed his written statement admitting almost all the pleas of the claimants. However, the respondent No. 2 denied the allegations in claim petition. Learned Workmen Compensation Commissioner framed following three issues in the claim petition:

1. *Whether, claimants were dependents on the deceased and are they entitled to sue?*
2. *Whether, deceased was a salary paid workman of the respondent, if so, what was his age and salary, if any?*
3. *From whom the claimants are entitled to compensation?*

4) On behalf of the claimants only one witness P.W. Kabul Chand (appellant – Claimant) was examined, who corroborated the contents of the claim petition. Learned Workmen Compensation Commissioner found that since the claimants were owner of 30 Nali land and have their own means of livelihood and, as such, they were not dependent on the deceased. It did not give any finding on issue Nos. 2 and 3, holding that owing to above finding, issue Nos. 2 and 3 are not required to be decided.

5) After hearing the learned counsel for the appellants and on perusal of lower court record, I found that the respondent No. 1 Kalam Chand is infact son of the appellants – claimants. In other words, the owner of the vehicle himself is son of the claimants – appellants. It has been admitted by the witness Kabul Chand, examined before the trial court, that the deceased and respondent No. 1 are real brothers. It is hard to believe that the respondent No. 1

has employed his own brother as conductor and was being paid Rs. 400/- per month. There is no documentary evidence showing any receipt of payment made by respondent No. 1 to his brother deceased Anar Chand. As such, the story as to the fact that the deceased was workman employed by his brother in his Bus is doubtful, and cannot be said to have been proved. Unless and until, the claimants prove that the deceased was a workman, there is no question of granting compensation under the Workmen Compensation Act.

6) In the facts and circumstances of the case, for the reasons as discussed above, I find no force in this appeal. The appeal is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt. 22nd February, 2006.
H.Negi